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October 26, 2016

## Via Electronic Filing

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Notice of Ex Parte Presentation:  
WC Docket No. 15-69, Petition for Limited, Expedited Waiver By Westelcom  
Network, Inc. of Section 61.26(a)(6) of the Commission's Rules

Dear Ms. Dortch:

On October 24, 2016, Paul F. Barton, President of Westelcom Network, Inc. ("Westelcom"), along with the undersigned, met with Mr. Claude Aiken, Legal Advisor, Wireline, to Commissioner Clyburn. At this meeting, we provided the attached document and used it for purposes of our presentation. As part of the presentation, we urged prompt Commission action granting Westelcom's Petition. We stressed the un rebutted, fact-rich record that supports approval by the Commission of the relief that Westelcom seeks in its pending "Petition for Limited, Expedited Waiver By Westelcom Network, Inc. of Section 61.26(a)(6) of the Commission's Rules" (the "Petition").

Among other public interest benefits, we noted that a prompt grant of the Petition will allow the Company to once again be afforded a reasonable transition of its interstate switched access rates. This opportunity, in turn, will help avoid the continued negative impacts upon Westelcom's operations associated with the abrupt ninety-six percent (96%) flash cut in its interstate switched access revenue arising from the use of Verizon New York rates, which rates have now been used by the Company for close to twenty months based on the Census Bureau's ("CB's") reclassification of Watertown, New York as an "urbanized area."

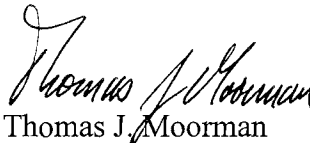
Consistent with Commissioner Clyburn's statements supporting advanced networks as a means to improve rural healthcare (*see, e.g.,* Statement of FCC Commissioner Mignon L. Clyburn, Senate Committee on Commerce, Science, and Transportation, *Oversight of the Federal Communications Commission*, March 2, 2016 at 1, we stressed that a grant of Westelcom's Petition will also establish the foundation for the continued expansion of the rural

healthcare network services that Westelcom provides to the Adirondack North Country Area in upstate New York. We also stressed the common sense conflict that results from the application of the CB's reclassification of Watertown, New York as it applies to Westelcom.

Specifically, the record supports the fact that by adding Fort Drum to the Watertown area it exceeded the 50,000 population threshold but did so in a manner that results in adding a geographic area that included at the time of the filing of the Petition a population of approximately twelve thousand (12,000). *See* Petition at 8-9. However, equally clear in the record is that, as a result of Army regulations, Westelcom is ineligible to serve this area through its self-provisioned fiber-based switching network. *See id.* at 9-10, n.33. Westelcom noted that it defies common sense to conclude that Westelcom is not a rural Competitive Local Exchange Carrier ("Rural CLEC") based, in part, on including a geographic area in which Westelcom is ineligible to provide facilities-based end user services. So too, based on the rural nature of the Adirondack North Country Area that Westelcom is committed to serve, it is contrary to common sense that Westelcom could rationally be treated for interstate switched access rate purposes the same as AT&T and Verizon.

In all events, Westelcom asserted that it has amply met the standard for waiver of the Commission's Rules. The fully developed factual record upon which Westelcom's Petition is based justifies the relief that Westelcom seeks. We noted this conclusion is also shared by the Honorable Chuck Schumer and the Honorable Kirsten Gillibrand and separately, the Honorable Elise Stefanik, each of which the record demonstrates fully supports the relief that Westelcom has requested.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Moorman".

Thomas J. Moorman  
Counsel to the Westelcom Network, Inc.

Attachment

cc: Claude Aiken (via email)



Westelcom Family of Companies

**Ex Parte Presentation  
October 24th, 2016  
Westelcom Network, Inc.  
Pending Waiver Request**



## Outline

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- History of Proceeding and Status
- Waiver Standards & Commission Discretion
- Effective Implementation of Policy is Advanced by a Grant of Westelcom's Waiver
- The Facts at Issue Stand Unrebutted
- Issues for Resolution
- Conclusion



## History of Proceeding and Status

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- Westelcom filed a Petition for Limited, Expedited Waiver of Section 61.26(a)(6) of the Commission's Rules on February 23, 2015 ("Petition").
- Public Notice of the Petition was issued on March 25, 2015 (WC Docket No. 15-69, DA 15-372) and was established as a "permit-but-disclose" proceeding for *ex parte* purposes.
- Westelcom filed an updated Petition on March 30, 2015, pursuant to the March 25, 2015, Joint Protective Order issued in this proceeding (DA 15-373).
- The only comments on the Petition were filed on April 24, 2015 by AT&T Services, Inc.; CTL's reply comments supported AT&T.
- Westelcom filed its reply comments on May 11, 2015.



## Waiver Standard & Commission Discretion

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- The Commission, in its discretion, may grant a waiver when good cause is shown.
- Good cause has been explained by the Commission to allow the following:
  - The Commission may exercise its discretion to waive a rule where the particular facts/special circumstances make strict compliance inconsistent with the public interest.
  - The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.



## Effective Implementation of Policy is Advanced by a Grant of the Waiver

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- The policies at issue in this proceeding include the following:
  - Establishment of “just and reasonable” rates and avoidance of flash-cuts.
  - Establishment for all carriers of standardized glide paths aimed at providing a reasonable transition to bill and keep.
  - Companion policy to increase access to broad band by rural health care providers and foster “development and deployment of broadband health care networks, particularly networks that include HCPs that serve rural areas.”



## The Facts at Issue Stand Unrebutted

- There are no facts in controversy; the facts set forth by Westelcom are unrebutted on the record.
- Among the facts presented are the following:
  - Westelcom began operation in 1981 and operated as a “Rural CLEC” under Section 61.26(a)(6) of the Commission’s rules since their adoption in 2001.
  - Westelcom has relied on all sources of revenue to replace leased network with its own fiber-based network that provides advanced telecommunications services.
  - Westelcom’s operations provide a considerable number of fiber-based connections and advanced service capability to multiple rural health care providers in the Adirondack North Country area of New York.
  - In August 2011 the Census Bureau (“CB”) altered significantly its prior standards for determining an “urbanized area,” and used these new criteria in March, 2012 to reclassify Watertown, NY (an area served by Westelcom).
  - Fort Drum was included in the Watertown urbanized area, but facilities-based service to the Fort’s housing is not available to local carriers like Westelcom.
  - The CB identified the need for other agencies that use the CB classifications to review such classifications in light of those agencies’ particular programs.
  - In October 2014, Westelcom first became aware of the CB’s action which changed Westelcom’s prior status as a Rural CLEC under Section 61.26(a)(6).
  - The change in status from a Rural CLEC to a non-Rural CLEC resulted in a 96% flash-cut reduction in interstate exchange access revenues.





## Issues for Resolution

- The record confirms that each of the following issues should be answered in the affirmative:
  - Will consumers in the Adirondack North Country area of New York benefit from a grant of Westelcom's waiver request?
  - Will consumers in the Adirondack North Country area of New York be harmed if Westelcom's waiver request is denied?
  - Does the record support the position that grant of Westelcom's waiver request will advance the Commission's 2011 *USF/ICC Transformation Order* policy and its 2012 *Healthcare Connect Order* policy and also preserve the underlying policy of the *CLEC Access Charge Reform Order*?
  - Will a grant of the waiver allow Westelcom:
    - n a reasonable transition to bill and keep?
    - n to continue its investment in fiber-based networks which are utilized to provide advanced telecommunications services to rural health care providers?
    - n to continue Commission-established "just and reasonable" Rural CLEC access rates and avoid flash cuts?
  - Will a denial of Westelcom's waiver request:
    - n frustrate these same policies?
    - n create flash cuts on CLEC access rates?
    - n prevent further network investment?



## Conclusion

- Based on undisputed facts in the record associated with Westelcom's specific operations and network deployment, the policies of the *USF/ICC Transformation Order*, *Healthcare Connect Order*, and the *CLEC Access Charge Reform Order* are frustrated by rote application of Section 61.26(a)(6).
- The Westelcom Petition for waiver should be granted expeditiously.